

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

AXA EQUITABLE LIFE INSURANCE
COMPANY COI LITIGATION

This document relates only to 16-cv-740

ECF CASE

No. 16 Civ. 740 (JMF)

~~No. 17 Civ. 4767 (JMF)~~

~~No. 17 Civ. 4803 (JMF)~~

~~No. 17 Civ. 9355 (JMF)~~

~~No. 18 Civ. 2111 (JMF)~~

**SUGGESTION OF DEATH, UNOPPOSED MOTION FOR SUBSTITUTION, AND
~~PROPOSED~~ ORDER**

Counsel for Class Plaintiffs in the above-referenced action gives notice and suggests upon the record, pursuant to Federal Rule of Civil Procedure 25(a)(1), the death of Allen Dyer, trustee for the Currie Children Trust, who as trustee was a Class Representative for the Nationwide Contract Class and the Nationwide Section 4226 Class, and was also pursuing individual claims in this Action for violations of California's Elder Abuse and Dependent Civil Protection Act, Cal. Wel. & Inst. Code § 15600, *et seq.*, and of California's Unfair Competition Law (CUCI), Cal. Bus. & Prof. Code § 17200, *et seq.* alongside Barbara Currie, as personal representative of the estate of Malcolm Currie. *See* ECF Nos. 592 & 593.

Mr. Dyer served as a plaintiff in this Action since March 16, 2018. Mr. Dyer was the Trustee of the Currie Children Trust, the owner of an AUL II policy with a face amount of \$4,200,000 (Policy No. 156220683), that is one of the policies at issue in this Action. He passed away on September 21, 2022.

Both the Class and individual claims were brought by the Currie Children Trust, through its trustee, Mr. Dyer, and may be maintained for its benefit through Mr. Dyer's successor trustee. "As far as what the Supreme Court has referred to as 'the common law of trusts' is concerned, it is hornbook law that an action brought by a trustee is not ordinarily abated by his failure to continue in his office. When a trustee party leaves office, an action is ordinarily revived in the name of the successor representative." *Corbin v. Blankenburg*, 39 F.3d 650, 653 (6th Cir. 1994) (citations and internal quotation marks omitted).

Further, in the class action context, courts routinely permit substitution of deceased class representatives. *See, e.g., Duncan v. Unity Life and Accident Ins. Ass'n*, 2003 WL 1907959, at *1 n.1 (S.D.N.Y. Apr. 18, 2003) (permitting daughter of deceased class representative to be substituted as class representative); McLaughlin on Class Actions § 4:36 ("[C]ourts have consistently granted plaintiffs leave to substitute new representatives where . . . a class has already been certified and the certified representative becomes unavailable (*e.g., dies . . .*)").

The Currie Children Trust provides that upon Mr. Dyer's death, the then-living beneficiaries of the Trust may designate a successor trustee. Mary J. McDonough has been designated as successor trustee by the Trust's living beneficiaries. Accordingly, pursuant to Rule 25(a), it is hereby requested that "Mary J. McDonough, as trustee of the Currie Children Trust" be substituted in place of "Allen Dyer, as trustee of the Currie Children Trust" as a plaintiff and Class Representative in this Action, so that the Currie Children Trust's Class and individual claims survive and this Action on its behalf may proceed.

I hereby certify that I have contacted Counsel for Defendant concerning the request in this Motion, and that Defendant does not oppose the Substitution, without prejudice to any defenses that Defendant may assert in this Action.

Dated: May 17, 2023

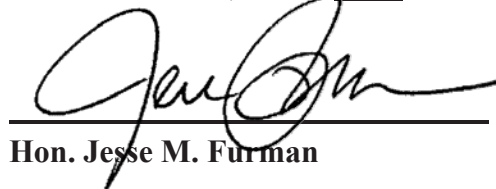
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The Clerk of Court is directed to substitute “Mary J. McDonough, as trustee of the Currie Children Trust” in the place of “Allen Dyer, as trustee of the Currie Children Trust” as plaintiff and class representative in this case.

Class Counsel

SO ORDERED, THIS 18th DAY OF May, 2023


Hon. Jesse M. Furman